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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Western Sahara

Working paper prepared by the Secretariat

I. Report and good offices of the Secretary-General

1. Pursuant to General Assembly resolution 70/98, the Secretary-General submitted to the Assembly at its seventy-first session a report on the question of Western Sahara (A/71/224). The report covered the period from 1 July 2015 to 30 June 2016 and contained a review of the activities carried out by the Secretary-General in the exercise of his good offices.

2. Also during the period under review, pursuant to Security Council resolution 2218 (2015), the Secretary-General submitted a report on 19 April 2016 to the Council on the situation concerning Western Sahara (S/2016/355).

3. In its resolution 2218 (2015), the Security Council called upon all parties to cooperate fully with the operations of the United Nations Mission for the Referendum in Western Sahara (MINURSO), including its free interaction with all interlocutors, and to take the steps necessary to ensure the security of and unhindered movement and immediate access for the United Nations and associated personnel in carrying out their mandate, in conformity with existing agreements. The Council also called upon the parties to continue to show political will and work in an atmosphere propitious for dialogue in pursuing their negotiations on the future status of Western Sahara. It requested the Secretary-General to brief the Council on the implementation of the resolution, challenges to MINURSO operations and steps taken to address them. The Council decided to extend the mandate of MINURSO until 30 April 2016.

4. The report of the Secretary-General to the Security Council (S/2016/355) covered developments since his previous report, dated 10 April 2015 (S/2015/246), and provided, among other things, information on the situation on the ground, the status and progress of the political negotiations on Western Sahara, his activities and

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those of his Chef de Cabinet, the implementation of resolution 2218 (2015), and the existing challenges to the Mission's operations and steps taken to address them. The report also provided information on the Secretary-General's visit to the region from 3 to 7 March 2016, namely its results and subsequent developments. It concluded with observations and recommendations.

5. In the report, the Secretary-General informed the Security Council that on 16 March 2016 the Permanent Mission of Morocco had sent a note verbale to his Executive Office transmitting a "list of 84 international civilian personnel of MINURSO and the African Union who should leave the Kingdom of Morocco within three days". By 20 March 2016, the 70 United Nations and 3 African Union international civilian personnel on the list actually present in Laayoune and their dependants had been temporarily reassigned. In a letter dated 20 March, the then Secretary-General of the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente Polisario), Mohammed Abdelaziz, criticized the decision of Morocco to call for the removal of the civilian staff. The Secretary-General indicated that, aside from that crisis, the situation in Western Sahara, as it presented itself to MINURSO, had been generally stable since his previous report. He referred to one potential violation of the ceasefire, as defined in military agreement No. 1, in February 2016. Municipal and, for the first time, regional elections had been held in Morocco and in Western Sahara on 4 September 2015. Insofar as MINURSO could ascertain, the elections were conducted without incident. King Mohammed VI had visited Laayoune in November 2015 and Dakhla in February 2016. The Secretary-General referred to the statement made by the King on 6 November 2015, on the occasion of the fortieth anniversary of the Green March, as well as the reaction, on 17 November 2015, by Frente Polisario, which expressed its "deep concern" at the content of the King's speech.

6. The Secretary-General stated that, in the refugee camps near Tindouf, Algeria, life and social activities were being conducted peacefully and in a relatively calm atmosphere. The severe living conditions, already affected by a continuing decrease in humanitarian aid, had deteriorated further in October 2015 as a result of prolonged heavy rains that had devastated the five camps, destroying many of the refugees' mud-brick homes, infrastructure and food supplies.

7. The Secretary-General indicated that, after the publication of his previous report (S/2015/246), he had dispatched his then Chef de Cabinet, Susana Malcorra, to communicate his understanding of the issues at stake and give new impetus to the negotiating process on Western Sahara. The Personal Envoy of the Secretary-General for Western Sahara, Christopher Ross, had, at the request of the Secretary-General, moved to intensify his efforts through bilateral consultations and shuttle diplomacy. The Personal Envoy's objective was to foster new ideas with a view to resuming the political negotiations between the parties, in accordance with the Manhasset formula. Working towards this objective, Mr. Ross had conducted four trips to the region: from 31 August to 10 September 2015; from 19 to 28 October 2015; from 22 to 30 November 2015; and from 16 to 25 February 2016. A full account of the activities undertaken by the then Chef de Cabinet and the Personal Envoy can be found in the report of the Secretary-General (S/2016/355).

8. In the light of the ongoing stalemate and his desire to visit MINURSO, the Secretary-General visited the region from 3 to 7 March 2016, visiting Nouakchott,

the Smara refugee camp near Tindouf, Rabouni, the MINURSO team site in Bir Lahlou and Algiers. The Government of Morocco was unable to receive him during that time frame. His visit had four objectives: (a) to make his own assessment and contribution to the search for a settlement; (b) to visit MINURSO and pay tribute to its civilian personnel and military observers; (c) to bear witness to the protracted humanitarian plight of the refugees; and (d) to exchange views on other issues of mutual interest with relevant leaders.

9. With regard to the activities of MINURSO, the Secretary-General reported that, as at 31 March 2016, local cooperation had been maintained by both parties at the team site level. West of the berm, apart from the potential breach of the ceasefire mentioned in paragraph 5 above, MINURSO had recorded no other new violations by the Royal Moroccan Army besides the nine long-standing violations indicated in his previous report (see S/2015/246, para. 25). East of the berm, MINURSO had observed and recorded one new violation, namely, the Frente Polisario military forces' relocation of two units away from their original location, in addition to the three long-standing violations indicated in the Secretary-General's previous report (ibid.).

10. On mine action, the Secretary-General informed the Security Council that landmines and other explosive remnants of war had continued to endanger the lives of MINURSO military observers and logistical teams, as well as local and nomadic populations. As of the end of March 2016, a total of 52 cluster strike areas and 42 minefields remained to be addressed east of the berm. However, the departure of all international staff overseeing the demining project managed by the Mine Action Service as part of MINURSO had resulted in the suspension of all demining activities since 20 March 2016. The Secretary-General also indicated that the potential for regional instability and insecurity had increasingly affected the operational environment of MINURSO.

11. On substantive civilian activities, the Secretary-General indicated that, during the reporting period, his Special Representative for Western Sahara had maintained constructive contacts with the parties primarily through their respective coordination offices. However, the Mission's substantive activities had come to a halt following the departure of the political segment of the Mission in March 2016 at the request of Morocco. West of the berm, access by MINURSO to local interlocutors continued to be restricted to the MINURSO coordination office of Morocco, as well as the Moroccan civil and military authorities. The long-standing issue of MINURSO vehicles operating with Moroccan licence plates west of the berm persisted, as described in previous reports (see S/2015/246). In the refugee camps south of Tindouf, MINURSO and the United Nations agencies enjoyed unhindered access and interaction with Frente Polisario representatives and refugees, as well as with local and international civil society organizations.

12. The Secretary-General indicated that the parties continued to have significantly divergent interpretations of the Mission's mandate. For the United Nations, the Mission's mandate was defined in successive Security Council resolutions. To respond to the expectations of the Council, effective implementation of the mandate of MINURSO required that the Mission be able to perform the full range of standard peacekeeping functions that United Nations operations around the world perform. The Secretary-General also noted that the temporary reassignment of

the Mission's international personnel from Laayoune to various locations had severely affected its capacity to continue its functions. Beyond the operational impact, the withdrawal of the international civilian component had seriously compromised the capacity of the Mission to perform the mandate established by the Security Council.

13. With regard to humanitarian activities and human rights, the Secretary-General indicated that the International Committee of the Red Cross, in its role as a neutral intermediary, had continued to work with the parties and families concerned in treating the cases of persons still unaccounted for in relation to the past hostilities.

14. With regard to assistance to and protection of Western Saharan refugees, the Secretary-General indicated that the Office of the United Nations High Commissioner for Refugees (UNHCR) was continuing to provide international protection to Western Saharan refugees living in the five camps near Tindouf and, together with its partners, deliver life-saving assistance and organize livelihood activities targeting vulnerable refugees, and young people in particular. These included multisectoral activities in the areas of protection, shelter, water and sanitation, health, nutrition and education and the provision of non-food items, with a renewed focus on livelihoods. Pending the registration of the refugees in the camps near Tindouf, the humanitarian assistance provided by UNHCR and the World Food Programme continued to be based on a population planning figure of 90,000 vulnerable refugees, with the latter furnishing an additional 35,000 food rations to persons with poor nutritional status. The Secretary-General noted that underfunding continued to affect the regular refugee programme despite high-level efforts to mobilize additional assistance. On 22 July 2015, following her visit to the region, his then Chef de Cabinet convened a meeting in New York of permanent representatives from existing and potential donor countries to encourage the mobilization of additional financial resources to address the shortfalls, particularly in food assistance. A more detailed account of the assistance provided can be found in the report of the Secretary-General.

15. The Secretary-General informed the Security Council that all activities of the confidence-building measures programme, as stipulated in the plan of action of 2012, had been suspended in June 2014. As it continued its consultation and cooperation with both parties, UNHCR remained ready to facilitate the prompt resumption of the family visits and cultural seminars through the existing coordination mechanism. The Secretary-General indicated that over 12,000 individuals were registered to benefit from the family visits programme. UNHCR remained committed to the mandate and to the principles of the confidence-building measures programme and had thus maintained a minimum operational capacity to respond immediately at such time as the confidence-building activities resumed. It was imperative that the programme continued to link the population divided by the conflict for the last 40 years.

16. The Secretary-General also informed the Security Council that, as jointly agreed with Morocco, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had carried out a technical mission to Laayoune and Dakhla in Western Sahara from 12 to 18 April 2015. An account of the visit is contained in the report of the Secretary-General, along with other information relating to human rights, including with regard to the missions undertaken to Dakhla

by the Special Rapporteur on the right to food on 10 October 2015 and by the Independent Expert on human rights and international solidarity on 19 and 20 January 2016; the adoption on 8 October 2015 of concluding observations by the Committee on Economic, Social and Cultural Rights of the Economic and Social Council in respect of the fourth periodic report submitted by Morocco; and the technical mission carried out by OHCHR, pursuant to an agreement with Algeria and Frente Polisario, to the Western Saharan refugee camps near Tindouf, Algeria, from 29 July to 4 August 2015.

17. With regard to the African Union, the Secretary-General informed the Security Council that, before the request by the Government of Morocco for the three African Union personnel to leave Laayoune, MINURSO had continued its cooperation with the observer delegation of the African Union. On 18 March, the Chairperson of the African Union Commission issued a statement deploring the decision by Morocco to remove personnel from MINURSO. She also stressed the need to make progress in the political process and called for the international community to provide unreserved support for the United Nations efforts.

18. In his observations and recommendations, the Secretary-General indicated that, given the lack of progress towards a resolution of the dispute over the status of Western Sahara, which had not changed since his previous report, the efforts of the United Nations through the work of his Personal Envoy, of MINURSO and of the agencies present on the ground remained highly relevant. The frustrations he had witnessed among Western Saharans, coupled with the expansion of criminal and extremist networks in the Sahelo-Saharan region, had presented increased risks for the stability and security of all the countries of the region. A settlement of the Western Sahara conflict would mitigate those potential risks and promote regional cooperation in the face of common threats and regional integration to bolster economic opportunity. As he had urged during his visit to the region, it was crucial to make progress as soon as possible to address the tragic humanitarian situation that had lasted far too long. In that connection, he continued to note with regret that the political process that had begun in April 2007 had not yet opened the way to the genuine negotiations for which he and the Council had repeatedly called.

19. The Secretary-General indicated that the fundamental difficulty was that each party came to the table with a different vision. The time had come to engage in serious negotiations without preconditions and in good faith to reach "a mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara" (see Security Council resolution 2218 (2015), para. 7). The mutually acceptable political solution should include resolution of the dispute over the status of Western Sahara, including through agreement on the nature and form of the exercise of self-determination. The negotiations must be open to the two parties' proposals and ideas. Algeria and Mauritania, as neighbouring countries, could and should make important contributions to the process. To that end, the Secretary-General had requested the Personal Envoy to redouble his efforts to make progress with all concerned.

20. The Secretary-General recalled that the Security Council had established MINURSO to monitor the ceasefire between the parties, to maintain the military status quo and, subject to the agreement of the parties, to organize a referendum on self-determination. MINURSO, as with any United Nations peacekeeping operation,

was responsible for reporting to the Secretariat, the Security Council and his Personal Envoy on local developments affecting or relating to the situation in its area of operation, including the maintenance of the ceasefire and political and security conditions affecting the peace process that his Personal Envoy was facilitating. Without a suitable and fully staffed international civilian component, the Mission could not fulfil a core component of its functions and would thus fail to meet the Security Council's expectations. The Secretary-General stated that he was very deeply concerned that the security environment in the Mission's area of operation was likely to continue to deteriorate and further compound the existing limitations placed on its ceasefire monitoring activities. He called on the Security Council to restore and support the mandated role of MINURSO, uphold peacekeeping standards and the impartiality of the United Nations and, most importantly, avoid setting a precedent for United Nations peacekeeping operations around the world. The Mission's presence and successful operation were critical to ensuring the parties' observation of the ceasefire, as a mechanism to support the implementation of successive Security Council resolutions, and as a visible representation of the international community's commitment to achieving a resolution to the conflict. As broad engagement across sectors and communities was essential for any peacekeeping mission, the Secretary-General expressed his hope, in particular, that the remaining limitations on the Mission's "free interaction with all interlocutors", as cited in every Security Council resolution on the subject since 2012, would be removed. He further stated that the risk of a rupture of the ceasefire and a resumption of hostilities, with its attendant danger of escalation into full-scale war, would grow significantly in the event that MINURSO was forced to depart or found itself unable to execute the mandate that the Security Council had set. In that context, and in the light of the continuing efforts of his Personal Envoy and the continuing importance of MINURSO, the Secretary-General recommended that the Council extend the mandate of MINURSO for a further 12 months, until 30 April 2017.

21. The Secretary-General noted with great concern the chronic lack of funding for the refugee programme and the deteriorating humanitarian situation and urged the international community to continue its support and to increase funding for this vital humanitarian programme. He also reiterated his call for continued consideration of registration in the refugee camps near Tindouf and invited efforts in this regard.

22. The Secretary-General indicated that he remained concerned by the suspension of the confidence-building measures programme. He encouraged the parties to engage in further dialogue with UNHCR on the resumption of that important humanitarian programme for the Western Saharan population.

23. The Secretary-General also indicated that it remained vital to address all human rights protection gaps and underlying human rights issues in situations of protracted conflict such as that in Western Sahara. Human rights did not have borders. All stakeholders were obliged to uphold the human rights of all people. He therefore urged the parties to respect and promote human rights, including by addressing outstanding human rights gaps and enhancing their cooperation with OHCHR and the various United Nations human rights mechanisms.

24. The Secretary-General commended the parties' cooperation with OHCHR during its missions to Western Sahara and the refugee camps in 2015, and also took note of the invitations extended by Morocco to the special procedures mandate holders of the Human Rights Council and its cooperation with them. He welcomed confirmation that the National Human Rights Council had been designated as the independent national preventive mechanism, as envisaged in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and urged completion of the legislative formalities required to complete the process. He also welcomed the expressed readiness of Frente Polisario to cooperate with OHCHR, as well as its positive amendment of the jurisdiction of the "military court" in the refugee camps. The Secretary-General urged further engagement with regard to the human rights situation in Western Sahara and the refugee camps, including by supporting human rights entities operating there and by augmenting the provision of humanitarian aid in the camps.

25. In the light of the continued interest in the exploration and exploitation of the natural resources of Western Sahara, the Secretary-General reiterated his call to all relevant actors to "recognize the principle that the interests of the inhabitants of these territories are paramount", in accordance with Article 73 of the Charter of the United Nations.

26. The Secretary-General noted that what he wanted to emphasize most strongly was that the conflict over Western Sahara and the attendant, truly heart-wrenching human suffering had to come to an end for the well-being of the Western Saharans and for the stability and security of the North African region and beyond. In 2007, the Security Council had asked the parties to negotiate a solution, and they had been unable to do so despite the passage of nine years. It was more urgent than ever for the parties to engage in genuine dialogue and for the international community to lend all assistance in this regard.

II. Consideration by the Security Council

27. Following its consideration of the report of the Secretary-General, the Security Council unanimously adopted resolution 2285 (2016) on 29 April 2016, by which it emphasized the urgent need for MINURSO to return to full functionality; requested the Secretary-General to brief the Council within 90 days on whether MINURSO had returned to full functionality and expressed its intention, if MINURSO had not achieved full functionality, to consider how best to facilitate achievement of that goal; reaffirmed the need for full respect of the military agreements; called upon all parties to cooperate fully with the operations of MINURSO and ensure the security of and unhindered movement and immediate access for the United Nations and associated personnel in carrying out their mandate; and called upon the parties to continue to show political will and work in an atmosphere propitious for dialogue in order to enter into a more intensive and substantive phase of negotiations and to continue negotiations under the auspices of the Secretary-General without preconditions and in good faith, with a view to achieving a just, lasting and mutually acceptable political solution that would provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter, and noted the role and responsibilities of the

parties in that respect. The Council decided to extend the mandate of MINURSO until 30 April 2017.

III. Consideration by the General Assembly

28. During the debate from 3 to 10 October 2015, the Special Political and Decolonization Committee (Fourth Committee) heard statements by 78 petitioners on the question of Western Sahara (see A/C.4/71/SR.4 and 5). On 3, 7 and 10 October, Member States addressed, among other things, the issue of Western Sahara. Some of them expressed strong support for the right of the Saharans to self-determination and reaffirmed their support for the relevant General Assembly and Security Council resolutions and the efforts of the Secretary-General and his Personal Envoy. Others expressed the belief that the autonomy plan by Morocco offered a realistic and viable option that could provide the best prospect for achieving a mutually acceptable solution to the question (see A/C.4/71/SR.2, 6 and 7).

29. At its 7th meeting, on 10 October 2016, the Committee had before it a draft resolution entitled "Question of Western Sahara" (A/C.4/71/L.4), submitted by the Chair, which it adopted without a vote.

30. On 6 December 2016, the General Assembly adopted the draft resolution, without a vote, as resolution 71/106. In that resolution, the Assembly, among other things, welcomed the commitment of the parties to continue to show political will and work in an atmosphere propitious for dialogue and the ongoing negotiations between the parties; called upon the parties to cooperate with the International Committee of the Red Cross and to abide by their obligations under international humanitarian law; requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara and to report thereon to the Assembly at its seventy-second session; and invited the Secretary-General to submit to the Assembly at its seventy-second session a report on the implementation of the resolution.